

REMARKS

I. The eight-way requirement to elect species places an unreasonable burden on Applicant.

Under the Office's current construction of this requirement, Applicant must file eight patent applications if he desires to seek protection for the claimed invention. If all eight applications were to issue and be maintained for their statutory lives, the total Patent Office fees, under the current fee schedule, not including representation costs, would be over \$64,000.00. This places an unreasonable burden on Applicant and, for this reason, the requirement to elect species should be withdrawn. Furthermore, an Office policy routinely resulting in this kind of financial burden would result in a patent system in which an Applicant could never, or at most rarely, obtain reasonable patent protection for worthy inventions simply because of the associated financial burden. Applicant respectfully submits that such a policy would therefore substantially impair the Office's mission to "...promote the progress of science and useful arts", in contradiction of its constitutional and statutory mandate.

II. No serious burden would be placed on the examiner if all of the pending claims were examined.

For a restriction requirement to be proper between patentably distinct inventions, the inventions must be independent and there must be a serious burden on the examiner. A serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search. See MPEP 803. Applicant respectfully asserts that the Office has not met any of these standards.

MPEP 808.02 is clear, in that "[w]here the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." Further, MPEP 803 clearly states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it

includes claims to independent or distinct inventions.” Therefore, the requirement for restriction is improper and should be withdrawn.

CONCLUSION

Applicants elect alleged Species “II”, with traverse, in accordance with the applicable Rules of Practice and to advance the prosecution. However, the Restriction Requirement is improper. Accordingly, in traverse, Applicant requests withdrawal of the Restriction Requirement for the reasons set forth above. Because Applicant has elected an alleged species as set forth by the Examiner, this response is complete. The Examiner is invited to contact James E. Walton at (817) 447-9955 with any questions, comments or suggestions relating to the referenced patent application.

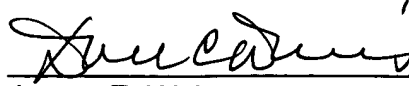
No fee is deemed to be necessary; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayments, to Deposit Account No. **502806**.

Please link this application to Customer Nos. 50779 and 38441 so that its status may be checked via the PAIR System.

Respectfully submitted,

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Date



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CUSTOMER NOS. 50779 AND 38441

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